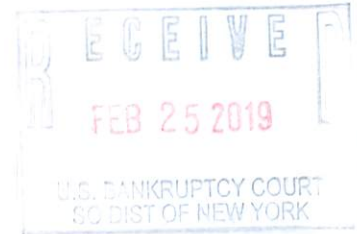


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6 RONALD JONES



8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF NEW YORK

11 In re:) CASE NO. 18-23538 (RDD)
12 SEARS HOLDINGS CORPORATION,) Chapter 11
13 et al.,)
14 Debtors.) NOTICE OF MOTION AND MOTION
15) FOR RELIEF FROM AUTOMATIC STAY
16) TO ALLOW CREDITOR, RONALD
JONES TO PROCEED WITH
PERSONAL INJURY CLAIMS

17 **MOTION FOR RELIEF FROM AUTOMATIC STAY TO ALLOW CREDITOR**
18 **RONALD JONES TO PROCEED WITH PERSONAL INJURY CLAIMS**

19 **I.**

20 **INTRODUCTION**

21 Pursuant to Section 362(d) of the Bankruptcy Code, and Rule 4001 of the Federal Rules of
22 Bankruptcy Procedure, RONALD JONES ("Movant") through his undersigned counsel, hereby
23 moves the Court for entry of an order terminating and providing relief from the automatic stay
24 imposed under Section 362(a) of the Bankruptcy Code, to allow RONALD JONES to resume and
25 pursue a certain state court litigation matter that was pending before the Petition Date, namely
26 KMART CORPORATION (SEARS HOLDINGS CORPORATION), et al., currently pending in the
27 Superior Court of the State of California for the County of Los Angeles, Case Number
28 18STLC09773. In support of his Motion, the Movant respectfully states as follows:

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II.

JURISDICTION

1. Pursuant to 28 U.S.C. §§ 157 and 1334, this Court has jurisdiction over this matter, which is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

III.

BRIEF FACTUAL BACKGROUND

2. KMART CORPORATION and SEARS HOLDINGS CORPORATION or the “Debtor” is a New York corporation.

3. KMART CORPORATION and SEARS HOLDING CORPORATION filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on or about October 15, 2018 (the “Petition Date”).

4. The Movant received written notice of the Petition on October 17, 2018 from Brian P. Suba, Esq., who is counsel for KMART CORPORATION in the State Court Litigation.

IV.

THE PARTIES

5. RONALD JONES is a plaintiff in the California state court litigation, in Los Angeles County, Case No. 18STLC09773.

6. KMART CORPORATION is defendants in the State Court Litigation.

V.

THE STATE COURT LAWSUIT

7. The Movant initiated the State Court Litigation by filing a complaint in the State of California, County of Los Angeles Superior Court, on July 20, 2018.

8. In the Complaint, the Movant asserted two claims against KMART CORPORATION (a) Premises Liability and (b) General Negligence. RONALD JONES alleged that, while he was customer at KMART CORPORATION he was riding defendant’s wheelchair cart, attempted to turn around when his right arm got pinned between a wall and a crate due to clutter aisle,. He alleged that the clutter aisle posed a hazardous condition to the general public and invitees, and that the hazardous condition had not been fixed by KMART CORPORATION’s employees in a timely

1 fashion. As a result of the incident, RONALD JONES alleged that he sustained some bleeding and
2 some pain to his right arm.

3 9. In October 2016, the Movant discovered that KMART CORPORATION maintains
4 applicable liability insurance coverage which appears to have been in effect on the date when the
5 Movant was injured on KMART CORPORATION's premises. This coverage is provided by
6 Sedgwick with claim number L1608085173-0001.

7 10. A Trial is currently scheduled for January 17, 2020 at 8:30 a.m. in Department "94".
8

9 VI.

10 LEGAL ARGUMENT

11 Section 362(d)(1) of the Bankruptcy Code provides in relevant part: "On request of a third
12 party in interest, and after notice and a hearing, the court shall grant relief from the stay provided
13 under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning
14 such stay - (1) for cause[.]" 11 U.S.C. § 362(d)(1). Courts have granted relief from the stay for cause
15 under this provision when necessary to permit pending litigation to be concluded in another forum
16 if the non-bankruptcy suit involves multiple parties or is ready for trial. See, e.g., In re Tucson
17 Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990) (stating that "[w] here a bankruptcy court may
18 abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause
19 may exist for lifting the stay as to the state court trial"); In re Kemble, 776 F.2d 802, 807 (9th Cir.
20 1985) (affirming an order lifting the stay to permit a creditor to pursue a conversion and fraudulent
21 conveyance action pending in the federal district court following a remand of the case by the
22 appellant court for a retrial on the damages issue).

23 Courts have held that cause exists to lift the stay, and that "debtors-defendants will suffer
24 little prejudice when they are used by plaintiffs who seek nothing more than declarations of liability
25 that can serve as a predicate for a recovery against insurers, sureties, or guarantors." In re Fernstrom
26 Storage and Van Co., 938 F.2d 731 (7th Cir. 1991); see also in re Borbridge, 81 B.R. 332 (E.D. Pa.
27 1988) (nothing that "[t] he easiest ground for determining that 'cause' exists in favor of an
28 unsecured creditor is when the creditor seeks to recover from nonestate property, such as an

1 insurance or indemnity agreement”).

2 **A. THE TWELVE FACTORS FOR LIFTING A STAY**

3 Courts have identified twelve nonexclusive factors a bankruptcy court should weigh in
4 determining whether the stay should be lifted to allow a creditor to continue pending litigation in a
5 non-bankruptcy forum. The relevant factors applicable to this Motion are:

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7 5. Whether the debtor’s insurance carrier has assumed full financial responsibility for
8 defending the litigation;

9

10 7. Whether the litigation in another forum would prejudice the interests of other
11 creditors, the creditors’ committee and other interested parties;

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13 10. The interests of judicial economy and the expeditious and economical determination
14 of litigation for the parties;

15 The fifth factor is particularly relevant because the Movant is seeking to recovery insurance
16 proceeds. It appears that the Debtor’s insurance carrier has already assumed financial responsibility
17 for defending the State Court Litigation. The Debtor’s estate would incur little or no expense to
18 proceed with the State Court Litigation.

19 The seventh factor is also favorable to lifting the stay because doing so would not prejudice
20 the interests of other creditors or interested parties. Allowing the State Court Litigation to move
21 forward to its conclusion will likely resolve the Movant’s claim to the Debtor’s estate, either by
22 settlement or by reducing said claims to judgment, possibly eliminating the need to enforce the
23 claims in bankruptcy if the insurance carrier pays the claims. Continuing the automatic stay,
24 however, will result in a duplication of effort and a waste of judicial resources as the Movant’s
25 claims would have to be adjudicated to a final resolution and liquidated in bankruptcy court.

26 Under the tenth factor, the State Court Litigation is substantially underway. A Trial is set for
27 January 17, 2020. State common law concepts of negligence are at play. Judicial economy and
28 efficiency weigh in favor of allowing the action to proceed.

VII.

CONCLUSION

For the forgoing reasons, the Movant respectfully requests entry of an order granting this Motion, providing the Movant relief from the automatic stay to pursue the State Court Litigation, and to obtain such other and further relief as may be just and proper to allow the Movant to pursue his personal injury claims against the Debtor's insurance proceeds.

DATED: February 19, 2019

LAW OFFICES OF
WILLIAM W. GREEN & ASSOCIATES

By: _____

Michael P. O'Sullivan,
Attorney for Creditor
RONALD JONES

PROOF OF SERVICE BY MAIL

(CCP §§1013(a) and 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of 18 years, and not a party to the within action. I am an employee or agent for **The Law Offices of William W. Green & Associates**, whose business mailing address is; **3419 Via Lido #607, Newport Beach, California 92663-3908**.

On **August 19**, 2018, I caused the foregoing document(s) described as: **"FORM INTERROGATORIES"** to be served on each interested party, addressed as follows:

Grant D. Waterkotte, Esq.
Brian P. Suba, Esq.
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Jacqueline Marcus
Garrett A. Fail
Sunny Singh
Attorneys for Debtors and Debtors in Possession

X (VIA MAIL) I caused a true copy of each document, placed in a sealed envelope with postage fully paid, to be placed in the United States mail at Santa Ana, California. I am "readily familiar" with this firm's business practice for collection and processing of mail, that in the ordinary course of business said document(s) would be deposited with the U.S. Postal Service on that same day. I understand that the service shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

____ (VIA PERSONAL SERVICE) I personally delivered such envelope/document by hand to the addressee.

____ (VIA FACSIMILE) I caused the within document(s) to be transmitted to telephonic facsimile to the addressee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 19**, 2019, at **Anaheim Hills, California**.


Stephanie Ri, Declarant